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Fax Number: 703-872-9306

Examiner: Kurt C. Rowan ♦ 703-308-2321

Total Pages 29
Including Cover:

From: Carl A. Forest, Reg. No 28,494

Sender's Direct Line: 303-894-6114
July 21, 2004

Date: 013174.0101PTUS

Client Number:

Comments: PLEASE CONFIRM RECEIPT OF DOCUMENTS

Applicant(s): Jerry Thomas Moore

Application No.: 09/636,731

Filed: August 10, 2000

Please find attached an original and three copies of the Appellant's
Reply Brief and Appellant's Request for an Oral Hearing.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application Serial No. 09/636,731

Filing Date: August 10, 2000

For: Chest Fly Box System

Inventor: Jerry Thomas Moore

Group Art Unit: 3643

Examiner: Rowan, Kurt C.

Docket No.: 013174.0101PTUS
(Formerly 9283/001)

Confirmation No.: 9120

Paper No.: 24

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I hereby certify that, on the date shown below, this correspondence is being sent via facsimile, addressed to: Attention Examiner Kurt C. Rowan, Mail Stop Appeal Brief - Patents Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Facsimile No. 703-872-3306.

Date

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPELLANT'S REQUEST FOR AN ORAL HEARING

Appellant hereby timely requests an oral hearing in the above entitled matter.
A duplicate of this sheet is attached.

Respectfully submitted,

Patton Boggs, LLP

Dated:

By:

Carl A. Forest, Reg. No. 28,494
Tel: 303-894-6114
Fax: 303-894-9239

Customer No. 24283

Page 1
Serial No. 09/636,731
201103v1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application Serial No. 09/636,731)

Group Art Unit: 3643

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Filing Date: August 10, 2000)

Examiner: Rowan, Kurt C.

JUL 21 2004

For: Chest Fly Box System)

Docket No.: 013174.0101PTUS
(Formerly 9283/001)

Inventor: Jerry Thomas Moore)

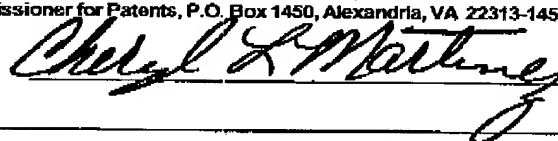
Confirmation No.: 9120

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No. 703-872-8306.

7/21/04
Date

MAIL STOP APPEAL BRIEF - PATENTS
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Sir:

APPELLANT'S REPLY BRIEF

Appellant herewith files his Reply Brief in support of his Appeal in the above-identified matter.

This Reply Brief is timely filed pursuant to 37 C.F.R. §1.192 because it is filed within two months of May 21, 2004, which is the date on which the Examiner's Answer was mailed. However, if required, Appellant hereby authorizes the Commissioner to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR §1.136(a) for its timely submission, as incorporating a petition for extension of the appropriate length of time, and to charge any additional costs for such extension to Deposit Account No. 50-1848.

Serial No. 09/636,731
Reply Brief
Page 1
201100v1

RESPONSE TO EXAMINER'S ARGUMENTS

The Examiner's Answer states the grounds for rejection by citing the rejections stated in the Office Action of 9/10/2003. These grounds for rejection are believed to be in error, but will not be responded to herein because they have each been responded to in Appellant's Appeal Brief filed February 12, 2004.

The Examiner's Answer responds to Appellant's argument that substantial modification of the cited references is required to arrive at the combination by citing *In re Bozek*, 163 USPQ 645 (CCPA 1969) for the proposition that

The test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the art.

Bozek, supra, pp. 549-550. *Bozek* is easily distinguishable from the present case based on its facts. *Bozek* involved an easy opening can top of the pull-tab type used in soft drink and beer cans. The pull-tab portion was defined by a score line. The alleged invention also included a rib in the can top that, in the claims at issue, extended across the score lines. The rib served to strengthen the top, and in addition there was a suggestion that it aided stacking. The primary reference, Speidel, showed everything but the rib crossing the score line. The secondary reference, Henschert, involved a sealing ring that enclosed the sides and top of the outer periphery of a can to hold the top on. The sealing ring was made readily removable by score lines, and had a rib that extended entirely around the sealing ring, and crossed the score lines. The appellant in that case argued non-analogous art, not the impropriety of modifying the references.

In fact, *Bozek* supports the argument of Appellant herein. *Bozek* states that one should look at what the combination of reference makes obvious to one of ordinary skill in the art. If appellant's modification argument is read again, it is seen that that is exactly what appellant is arguing: that one skilled in the art would not look at the hook and loop attachment of a small box with a single lure in it to a fishing rod, as shown in Gillespie, and think that it could be effectively combined with the rotatable metal hinge of Wimler to attach the fishing cabinet of Wimler to the harness. In *Bozek*, one skilled in the art could see that the continuous rib in Henschert that aided stacking would do the same in Speidel,

Serial No. 09/636,731
Reply Brief
Page 2
201100v1

without any modification. Appellant's argument is that one skilled in the art would not draw the same conclusion in this case.

The Examiner's Answer also states that applicant has submitted no evidence to support the contention that the hook and loop material would fail to support the stresses. While this misses applicant's argument somewhat¹, there actually is evidence within the references themselves to support this position. If one reads Gillespie, without having seen the present application, and with only Wimler in mind, the part of Gillespie that is most like the fishing cabinet of Wimler is the tackle box 12 of FIG. 1. Concerning the fishing accessories to be placed in the tackle box 12, Gillespie states:

For the most part, the fishing accessories contemplated by the present invention comprise the various relative small items commonly used by individuals in connection with fishing such as artificial bait commonly referred to in general terms as fishing lures and artificial flies, various scenting formulations, hooks, fishing line, relatively small first aid equipment and the like.

Gillespie, col. 1, line 64 – col. 2, line 3. Thus, absent the present disclosure, the tackle box 12 of Gillespie, not the small individual lure container 56a, is most akin to the fishing cabinet 9 of Wimler. Yet, even though Gillespie is mostly all about how to use the hook and loop fabric to secure fishing equipment, it only uses it to secure and organize very small articles, such as the individual lure boxes 56. It does not use the hook and loop fasteners for purposes such as the hinge for the lid 34, or to support the tackle box 12 itself. Thus, Gillespie is completely consistent with our argument that one skilled in the art would not see the hook and loop fasteners as a mechanism for attaching the cabinet of Wimler to the body of a fisherman.

The Examiner's Answer makes a somewhat convoluted argument about the buttons on the shirt in the drawing of the fisherman in Wimler to try to prove that the box of Wimler attaches to the chest. The Examiner argues, without support, that this button "is usually" at the height that the ribs extend down to. If one does not actually look at the drawing of Wimler, this is a little convincing, but looking at the drawing, one sees that the shirt is a

¹ Applicant's argument is not that applicant has proof that the combination would not work, but that one skilled in the art, in fact anyone familiar with hook and loop type fasteners, would not think that such a fastener would effectively support a fishing cabinet such as that of Wimler, and thus would not make the combination.

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Reply Brief

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four-button shirt and the button mentioned by the Examiner is the last button at the bottom, which is at the belly level of the fisherman. The Examiner also states that "Wimler shows that the harness is capable of being mounted higher on the chest of the fisherman", though there does not appear to be any support for this in Wimler. The type of harness used in Wimler is similar to a belt, and belts are worn around the waist, not the chest.

With regard to claim 4, the Examiner's Answer states that the support plate in Wimler is shown in FIG. 5 and is the plate that the stops are attached to. There is no evidence within Wimler that there is a support plate in FIG. 5. Wimler says the stops 19 "extend from the bottom of the cabinet". Wimler, lines 79-81. Claim 4 herein, recites that the support plate is part of the base piece, which is recited separately from the fly box, and which supports the fly box. Thus, there is no suggestion in Wimler for the horizontal support plate as claimed.

With regard to Volmer, the Examiner's Answer refers to the plates 84 as being equivalent to a fly box. This is the first time that the Examiner has acknowledged which part of Volmer is supposed to be equivalent to the fly box of claims 1 and 2. The examiner also for the first time indicates that the module 52 is the claimed base piece. This module 52 is shown in best detail in FIG. 11. It is nothing but an open-topped plastic box with fins 70 into which one can slide three closed fly boxes. This does not make sense, since the module 52 is designed to fit in the pack 76 (FIG. 4), while the plates 84 are designed to fit in the wallet 86 (FIG. 9). However, this interpretation of Volmer still does not overcome the argument B on pages 10 and 11 of the Appeal Brief, since neither the pack system 76 nor the wallet system 86 includes: a hinge for permitting movement of the fly box from a horizontal to a vertical position; and a fastener adapted to releasably secure the pocket-sized fly box to the base piece so the inside of the fly box can be accessed without removing the fly box from the base piece. The Examiner says it would be obvious to include the latter because it would be obvious to provide a free hand by not having to hold the fly box. But, the fact is that most fly boxes have to be held in one hand to access them, and there is no reason to assume the fly boxes of Volmer are any different, except for the instant application.

The interpretation of Hutton in the Answer borders on the ridiculous. The Answer

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says that Hutton can be used as claimed by turning the box 100 ninety degrees. But the box 100 is designed to be attached to the fisherman's belt via loops 302 and 304 (Fig. 3). This means, that to meet the claims, the fisherman has to lie down on his side. No fisherman is going to do that, particularly if he or she is a fly fisherman in a stream.

The Examiner's Answer dismisses the limitation that the rod holder is a trough, by citing *In re Dailey et al.*, 149 USPQ 47 (CCPA 1966) for the proposition that changes in shape are obvious. The Answer also argues that the change in shape is obvious because the function is the same and no stated problem is solved, citing *In re Kuhle*, 188 USPQ 8 (CCPA 1975). Both these cases are easily distinguishable, largely because the U-shaped trough of applicant involves not just a change of shape, but also a change in function which solves a stated problem. That is, the rod holder of Hutton inherently must hold the rod in a vertical or near vertical position, because it needs gravity to pull the rod down to catch the rod in the crimp formed by the hinged rod holder bracket and the side of the box. Thus, it would not work very well as a rod holder if the user was lying on his or her side. In the vertical position, the rod can catch on overhanging limbs when the fisherman is fishing a stream. In *Dailey*, the invention was a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The prior art showed a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The Board found no patentability in the generally spherical shape of the applicants bottle as compared to the oval shape of the prior art bottle, since the appellant could not point out any significance of the shape. In *Kuhle*, the invention was a battery-powered soil moisture tester and the claimed limitation at issue was a metallic wrapping around the inner surface of tubular battery housing. The Board found that this was little different from the metal tube lining of the prior art which served the same purpose, i.e., providing an electrical connection between the terminals. Here, the claimed trough supports the rod stably in a horizontal position, something which the hinged bracket of the prior art cannot do.

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In sum, the Answer does not provide any legal support for the rejections of the Examiner, and the rejections should be and claims 1 – 18, 23 – 25, 40, and 41 should be allowed.

Respectfully submitted,
Patton Boggs, LLP

Dated: 7/21/04

By: 

Carl A. Forest, Reg. No. 28,494
Tel: 303-894-6114
Fax: 303-894-9239

Customer No. 24283

Serial No. 09/636,731
Reply Brief
Page 6
201100v1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application Serial No. 09/636,731

Filing Date: August 10, 2000

For: Chest Fly Box System

Inventor: Jerry Thomas Moore

Group Art Unit: 3643

Examiner: Rowan, Kurt C.

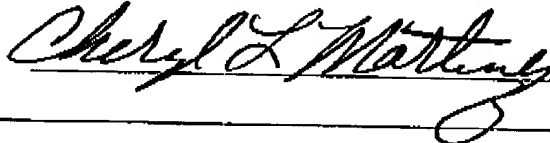
Docket No.: 013174.0101PTUS
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Confirmation No.: 9120

Paper No.: 24

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Page 1
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201103v1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application Serial No. 09/636,731)	Group Art Unit: 3643
Filing Date: August 10, 2000)	Examiner: Rowan, Kurt C.
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MAIL STOP APPEAL BRIEF - PATENTS
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Sir:

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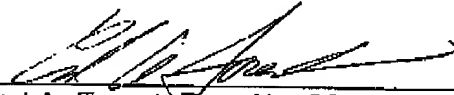
The Examiner's Answer dismisses the limitation that the rod holder is a trough, by citing *In re Dailey et al.*, 149 USPQ 47 (CCPA 1966) for the proposition that changes in shape are obvious. The Answer also argues that the change in shape is obvious because the function is the same and no stated problem is solved, citing *In re Kuhle*, 188 USPQ 8 (CCPA 1975). Both these cases are easily distinguishable, largely because the U-shaped trough of applicant involves not just a change of shape, but also a change in function which solves a stated problem. That is, the rod holder of Hutton inherently must hold the rod in a vertical or near vertical position, because it needs gravity to pull the rod down to catch the rod in the crimp formed by the hinged rod holder bracket and the side of the box. Thus, it would not work very well as a rod holder if the user was lying on his or her side. In the vertical position, the rod can catch on overhanging limbs when the fisherman is fishing a stream. In *Dailey*, the invention was a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The prior art showed a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The Board found no patentability in the generally spherical shape of the applicants bottle as compared to the oval shape of the prior art bottle, since the appellant could not point out any significance of the shape. In *Kuhle*, the invention was a battery-powered soil moisture tester and the claimed limitation at issue was a metallic wrapping around the inner surface of tubular battery housing. The Board found that this was little different from the metal tube lining of the prior art which served the same purpose, i.e., providing an electrical connection between the terminals. Here, the claimed trough supports the rod stably in a horizontal position, something which the hinged bracket of the prior art cannot do.

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In sum, the Answer does not provide any legal support for the rejections of the Examiner, and the rejections should be and claims 1 – 18, 23 – 25, 40, and 41 should be allowed.

Respectfully submitted,
Patton Boggs, LLP

Dated: 7/21/04

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APPELLANT'S REPLY BRIEF

Appellant herewith files his Reply Brief in support of his Appeal in the above-identified matter.

This Reply Brief is timely filed pursuant to 37 C.F.R. §1.192 because it is filed within two months of May 21, 2004, which is the date on which the Examiner's Answer was mailed. However, if required, Appellant hereby authorizes the Commissioner to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR §1.136(a) for its timely submission, as incorporating a petition for extension of the appropriate length of time, and to charge any additional costs for such extension to Deposit Account No. 50-1848.

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RESPONSE TO EXAMINER'S ARGUMENTS

The Examiner's Answer states the grounds for rejection by citing the rejections stated in the Office Action of 9/10/2003. These grounds for rejection are believed to be in error, but will not be responded to herein because they have each been responded to in Appellant's Appeal Brief filed February 12, 2004.

The Examiner's Answer responds to Appellant's argument that substantial modification of the cited references is required to arrive at the combination by citing *In re Bozek*, 163 USPQ 645 (CCPA 1969) for the proposition that

The test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the art.

Bozek, supra, pp. 549-550. *Bozek* is easily distinguishable from the present case based on its facts. *Bozek* involved an easy opening can top of the pull-tab type used in soft drink and beer cans. The pull-tab portion was defined by a score line. The alleged invention also included a rib in the can top that, in the claims at issue, extended across the score lines. The rib served to strengthen the top, and in addition there was a suggestion that it aided stacking. The primary reference, Speidel, showed everything but the rib crossing the score line. The secondary reference, Henchert, involved a sealing ring that enclosed the sides and top of the outer periphery of a can to hold the top on. The sealing ring was made readily removable by score lines, and had a rib the extended entirely around the sealing ring, and crossed the score lines. The appellant in that case argued non-analogous art, not the impropriety of modifying the references.

In fact, *Bozek* supports the argument of Appellant herein. *Bozek* states that one should look at what the combination of reference makes obvious to one of ordinary skill in the art. If appellant's modification argument is read again, it is seen that that is exactly what appellant is arguing: that one skilled in the art would not look at the hook and loop attachment of a small box with a single lure in it to a fishing rod, as shown in Gillespie, and think that it could be effectively combined with the rotatable metal hinge of Wimler to attach the fishing cabinet of Wimler to the harness. In *Bozek*, one skilled in the art could see that the continuous rib in Henchert that aided stacking would do the same in Speidel,

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without any modification. Appellant's argument is that one-skilled in the art would not draw the same conclusion in this case.

The Examiner's Answer also states that applicant has submitted no evidence to support the contention that the hook and loop material would fail to support the stresses. While this misses applicant's argument somewhat¹, there actually is evidence within the references themselves to support this position. If one reads Gillespie, without having seen the present application, and with only Wimler in mind, the part of Gillespie that is most like the fishing cabinet of Wimler is the tackle box 12 of FIG. 1. Concerning the fishing accessories to be placed in the tackle box 12, Gillespie states:

For the most part, the fishing accessories contemplated by the present invention comprise the various relative small items commonly used by individuals in connection with fishing such as artificial bait commonly referred to in general terms as fishing lures and artificial flies, various scenting formulations, hooks, fishing line, relatively small first aid equipment and the like.

Gillespie, col. 1, line 64 – col. 2, line 3. Thus, absent the present disclosure, the tackle box 12 of Gillespie, not the small individual lure container 56a, is most akin to the fishing cabinet 9 of Wimler. Yet, even though Gillespie is mostly all about how to use the hook and loop fabric to secure fishing equipment, it only uses it to secure and organize very small articles, such as the individual lure boxes 56. It does not use the hook and loop fasteners for purposes such as the hinge for the lid 34, or to support the tackle box 12 itself. Thus, Gillespie is completely consistent with our argument that one skilled in the art would not see the hook and loop fasteners as a mechanism for attaching the cabinet of Wimler to the body of a fisherman.

The Examiner's Answer makes a somewhat convoluted argument about the buttons on the shirt in the drawing of the fisherman in Wimler to try to prove that the box of Wimler attaches to the chest. The Examiner argues, without support, that this button "is usually" at the height that the ribs extend down to. If one does not actually look at the drawing of Wimler, this is a little convincing, but looking at the drawing, one sees that the shirt is a

¹ Applicant's argument is not that applicant has proof that the combination would not work, but that one skilled in the art, in fact anyone familiar with hook and loop type fasteners, would not think that such a fastener would effectively support a fishing cabinet such as that of Wimler, and thus would not make the combination.

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four-button shirt and the button mentioned by the Examiner is the last button at the bottom, which is at the belly level of the fisherman. The Examiner also states that "Wimler shows that the harness is capable of being mounted higher on the chest of the fisherman", though there does not appear to be any support for this in Wimler. The type of harness used in Wimler is similar to a belt, and belts are worn around the waist, not the chest.

With regard to claim 4, the Examiner's Answer states that the support plate in Wimler is shown in FIG. 5 and is the plate that the stops are attached to. There is no evidence within Wimler that there is a support plate in FIG. 5. Wimler says the stops 19 "extend from the bottom of the cabinet". Wimler, lines 79-81. Claim 4 herein, recites that the support plate is part of the base piece, which is recited separately from the fly box, and which supports the fly box. Thus, there is no suggestion in Wimler for the horizontal support plate as claimed.

With regard to Volmer, the Examiner's Answer refers to the plates 84 as being equivalent to a fly box. This is the first time that the Examiner has acknowledged which part of Volmer is supposed to be equivalent to the fly box of claims 1 and 2. The examiner also for the first time indicates that the module 52 is the claimed base piece. This module 52 is shown in best detail in FIG. 11. It is nothing but an open-topped plastic box with fins 70 into which one can slide three closed fly boxes. This does not make sense, since the module 52 is designed to fit in the pack 76 (FIG. 4), while the plates 84 are designed to fit in the wallet 86 (FIG. 9). However, this interpretation of Volmer still does not overcome the argument B on pages 10 and 11 of the Appeal Brief, since neither the pack system 76 nor the wallet system 86 includes: a hinge for permitting movement of the fly box from a horizontal to a vertical position; and a fastener adapted to releasably secure the pocket-sized fly box to the base piece so the inside of the fly box can be accessed without removing the fly box from the base piece. The Examiner says it would be obvious to include the latter because it would be obvious to provide a free hand by not having to hold the fly box. But, the fact is that most fly boxes have to be held in one hand to access them, and there is no reason to assume the fly boxes of Volmer are any different, except for the instant application.

The interpretation of Hutton in the Answer borders on the ridiculous. The Answer

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says that Hutton can be used as claimed by turning the box 100 ninety degrees. But the box 100 is designed to be attached to the fisherman's belt via loops 302 and 304 (Fig. 3). This means, that to meet the claims, the fisherman has to lie down on his side. No fisherman is going to do that, particularly if he or she is a fly fisherman in a stream.

The Examiner's Answer dismisses the limitation that the rod holder is a trough, by citing *In re Dailey et al.*, 149 USPQ 47 (CCPA 1966) for the proposition that changes in shape are obvious. The Answer also argues that the change in shape is obvious because the function is the same and no stated problem is solved, citing *In re Kuhle*, 188 USPQ 8 (CCPA 1975). Both these cases are easily distinguishable, largely because the U-shaped trough of applicant involves not just a change of shape, but also a change in function which solves a stated problem. That is, the rod holder of Hutton inherently must hold the rod in a vertical or near vertical position, because it needs gravity to pull the rod down to catch the rod in the crimp formed by the hinged rod holder bracket and the side of the box. Thus, it would not work very well as a rod holder if the user was lying on his or her side. In the vertical position, the rod can catch on overhanging limbs when the fisherman is fishing a stream. In *Dailey*, the invention was a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The prior art showed a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The Board found no patentability in the generally spherical shape of the applicants bottle as compared to the oval shape of the prior art bottle, since the appellant could not point out any significance of the shape. In *Kuhle*, the invention was a battery-powered soil moisture tester and the claimed limitation at issue was a metallic wrapping around the inner surface of tubular battery housing. The Board found that this was little different from the metal tube lining of the prior art which served the same purpose, i.e., providing an electrical connection between the terminals. Here, the claimed trough supports the rod stably in a horizontal position, something which the hinged bracket of the prior art cannot do.

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In sum, the Answer does not provide any legal support for the rejections of the Examiner, and the rejections should be and claims 1 – 18, 23 – 25, 40, and 41 should be allowed.

Respectfully submitted,

Patton Boggs, LLP

Dated: 7/21/04

By: 

Carl A. Forest, Reg. No. 28,494

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application Serial No. 09/636,731)	Group Art Unit: 3643
Filing Date: August 10, 2000)	Examiner: Rowan, Kurt C.
For: Chest Fly Box System)	Docket No.: 013174.0101PTUS
Inventor: Jerry Thomas Moore)	(Formerly 9283/001)
)	Confirmation No.: 9120
)	Paper No.: 24

Certificate of Facsimile

I hereby certify that, on the date shown below, this correspondence is being sent via facsimile, addressed to: Attention Examiner Kurt C. Rowan, Mail Stop Appeal Brief - Patents Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Facsimile No. 703-872-9306.

7/21/04
Date

Cheryl L. Mattingly

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPELLANT'S REQUEST FOR AN ORAL HEARING

Appellant hereby timely requests an oral hearing in the above entitled matter.
A duplicate of this sheet is attached.

Respectfully submitted,

Patton Boggs, LLP

Dated: 7/21/04

By: *Carl A. Forest*

Carl A. Forest, Reg. No. 28,494

Tel: 303-894-6114

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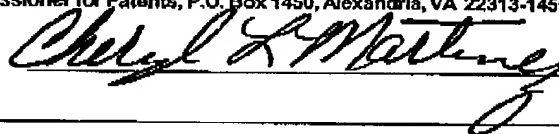
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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7/21/04
Date

MAIL STOP APPEAL BRIEF - PATENTS
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Sir:

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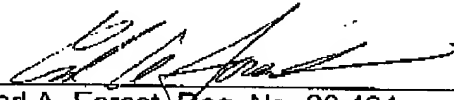
The Examiner's Answer dismisses the limitation that the rod holder is a trough, by citing *In re Dailey et al.*, 149 USPQ 47 (CCPA 1966) for the proposition that changes in shape are obvious. The Answer also argues that the change in shape is obvious because the function is the same and no stated problem is solved, citing *In re Kuhle*, 188 USPQ 8 (CCPA 1975). Both these cases are easily distinguishable, largely because the U-shaped trough of applicant involves not just a change of shape, but also a change in function which solves a stated problem. That is, the rod holder of Hutton inherently must hold the rod in a vertical or near vertical position, because it needs gravity to pull the rod down to catch the rod in the crimp formed by the hinged rod holder bracket and the side of the box. Thus, it would not work very well as a rod holder if the user was lying on his or her side. In the vertical position, the rod can catch on overhanging limbs when the fisherman is fishing a stream. In *Dailey*, the invention was a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The prior art showed a baby bottle that collapsed with the bottom portion closely mating the interior of top portion as the contents were withdrawn. The Board found no patentability in the generally spherical shape of the applicants bottle as compared to the oval shape of the prior art bottle, since the appellant could not point out any significance of the shape. In *Kuhle*, the invention was a battery-powered soil moisture tester and the claimed limitation at issue was a metallic wrapping around the inner surface of tubular battery housing. The Board found that this was little different from the metal tube lining of the prior art which served the same purpose, i.e., providing an electrical connection between the terminals. Here, the claimed trough supports the rod stably in a horizontal position, something which the hinged bracket of the prior art cannot do.

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Respectfully submitted,
Patton Boggs, LLP

Dated: 7/21/04

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